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No. 99-1030

IN THE
Supreme Court of the United States

CITY OF INDIANAPOLIS, INDIANA, AND
BART PETERSON, IN HIS OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF INDIANAPOLIS, INDIANA,
Petitioners,

v.

JAMES EDMOND AND JOELL PALMER,
ON THEIR OWN BEHALF AND ON BEHALF OF
A CLASS OF THOSE SIMILARLY SITUATED,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether checkpoints at which law enforcement officers briefly stop vehicular traffic, check motorists' licenses and vehicle registrations, look for signs of impairment, and walk a narcotics-detection dog around the exterior of each stopped automobile are unlawful under the Fourth Amendment.

PARTIES TO THE PROCEEDING

Petitioners are the City of Indianapolis, Indiana, and Bart Peterson, in his official capacity as Mayor of the City of Indianapolis. On January 1, 2000, while the parties were engaged in briefing on the petition for certiorari, Mayor Peterson succeeded Stephen Goldsmith as Mayor of Indianapolis and, therefore, has been substituted as a party in this case.

Respondents are James Edmond and Joell Palmer, on their own behalf and on behalf of a certified class of motorists who have been stopped or are subject to being stopped at certain roadway checkpoints in Indianapolis.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 183 F.3d 659 (7th Cir. 1999). The opinion of the district court (Pet. App. 24a-48a) is reported at 38 F. Supp. 2d 1016 (S.D. Ind. 1998).

JURISDICTION

The court of appeals entered its judgment on July 7, 1999. The court denied a timely petition for rehearing on August 18, 1999. On November 1, 1999, Justice Stevens extended the time for filing a petition for a writ of certiorari to and including December 16, 1999. The petition for a writ of certiorari was filed on December 15, 1999. The Court granted the petition on February 22, 2000. The Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The relevant constitutional provision is the Fourth Amendment to the United States Constitution (made applicable to the states and their local governments by the Due Process Clause of the Fourteenth Amendment):

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

1. In August 1998, the City of Indianapolis (City) began operating a roadway-checkpoint program. Under the program, the Indianapolis Police Department (IPD) administers the checkpoints at fixed locations according to specific written guidelines. Pet. App. 25a-27a. IPD supervisors select checkpoint locations weeks in advance "based on geographical suitability, taking into consideration area crime statistics and the ability to locate the checkpoint in a location which [would] minimize the interference with normal traffic flow . . . ." *Id.* at 56a. When operating the checkpoints, IPD officers post lighted signs to warn approaching motorists that they should be prepared to stop for a "narcotics checkpoint" where a "narcotics K-9" will be in use. *Id.* at 57a. To further warn motorists, the IPD positions marked cruisers near the checkpoints. *Id.*

Officers stop a predetermined number of vehicles in sequence as they approach a checkpoint. While officers process these stopped vehicles, other traffic continues without interruption. After processing each stopped vehicle, officers stop a new group of the same predetermined number of motorists. The guidelines permit no deviations from this procedure. Pet. App. 57a.

A team of officers, at least one of whom is dressed in full uniform, approach each stopped vehicle. An officer informs the driver that he or she has been stopped at a narcotics checkpoint, asks to see a driver's license and vehicle registration, and checks for signs of driver impairment.[1] Simultaneously, other officers walk around the vehicle's exterior a narcotics-detection dog that sniffs for narcotics. Pet. App. 57a. An officer investigates further only if he or she develops individualized suspicion of a regulatory violation, driver impairment, a threat to officer safety, or a narcotics or other crime. *Id.* Otherwise, the officers allow stopped motorists to leave without further delay. *Id.*

The IPD officers attempt to stop no motorist for longer than five minutes (unless officers discover grounds for a longer detention). Pet. App. 51a. The average stop lasts only two to three minutes. *Id.* at 57a. The IPD's checkpoint procedures prevent processing delays and traffic back-ups. *Id.* If traffic becomes congested, officers "would either suspend operation of the checkpoint or institute traffic control measures until the back-up had cleared." *Id.* at 58a.

The City operated six checkpoints between August and November of 1998. The IPD stopped a total of 1,161 vehicles and arrested 104 motorists—an effectiveness (or "hit") rate of nine percent. Arrests were divided almost equally between narcotics offenses (fifty-five arrests) and other crimes (forty-nine arrests). Pet. App. 3a-4a.

2. Respondents James Edmond and Joell Palmer, who allege being stopped at a checkpoint, brought this action in the United States District Court for the Southern District of Indiana on behalf of themselves and other similarly situated mo-

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[1] If a driver does not produce a driver's license, officers run a computer check (using computer terminals located in police vehicles at the checkpoint) to determine whether the driver has a valid license and whether any outstanding warrants exist for the driver. Pet. App. 58a.

torists. Respondents allege that the City "violated the Fourth Amendment by using roadblocks to seize motorists without individualized suspicion for the primary purpose of determining if they possess or are under the influence of illegal drugs." Pet. App. 32a. They sought an injunction to prohibit the City from using checkpoints. *Id.* at 25a.

The parties stipulated to the material facts and to the certification of a class consisting of all motorists stopped, or who are subject to being stopped, at checkpoints "maintained by the City of Indianapolis in an attempt to interdict and curtail unlawful drugs and unlawful drug use." Pet. App. 25a n.1, 30a. The district court denied respondents' preliminary injunction motion. *Id.* at 25a. The court first concluded that the constitutionality of the checkpoints should be analyzed under the balancing test articulated in *Brown v. Texas*, 443 U.S. 47 (1979). Pet. App. 34a. The court rejected respondents' contention that the court could balance the interests implicated by a checkpoint only if the government demonstrates a "special need" for conducting the checkpoint that goes beyond the ordinary need to enforce criminal laws. *Id.* at 34a-35a. The court explained that in upholding the constitutionality of sobriety checkpoints, this Court held that no such showing is required in "cases dealing with police stops of motorists on public highways." *Id.* at 35a (quoting *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450 (1990)).

Turning to the balance of interests at stake, the district court concluded that the City's interest in interdicting narcotics users and traffickers not only is "beyond serious dispute" but is also—given the sizable proportion of arrests—significantly advanced by the checkpoints. Pet. App. 35a-36a. With respect to the intrusions on motorists, the court found that law-abiding motorists would know that the stops had been officially authorized (and so would not be unduly alarmed by them) and that the IPD's guidelines adequately restrict the officers' discretion. *Id.* at 37a. The court also

concluded that the brief detention of a motorist to check his or her license and registration "is fairly non intrusive" and that any intrusion from "having a dog sniff the exterior of a motorist's vehicle" is "similar to that of an officer looking for contraband in plain view." *Id.* at 39a-40a. "Overall," the court concluded, "the checkpoints . . . are targeted effectively and are limited sufficiently to combat the city's drug crisis with minimal intrusion on motorists." *Id.* at 40a.

3. A divided court of appeals reversed. Pet. App. 1a. Writing for the majority, Chief Judge Posner acknowledged that if "reasonableness is to be assessed at the level of the entire program," rather than at the level of "the individual stop," then "these roadblocks probably are legal, given the high 'hit' rate and the only modestly intrusive character of the stops." *Id.* at 3a. The court believed, however, that it must review each individual stop because "courts do not usually assess reasonableness at the program level when they are dealing with searches related to general criminal law enforcement." *Id.* at 4a. In the court's view, the City's program was aimed at "general criminal law enforcement" and was "meant to intercept a completely random sample of drivers," but "there is neither probable cause nor articulable suspicion to stop *any* given driver." *Id.* at 5a-6a. For those reasons, the court held, the program was unconstitutional—at least absent some "urgent considerations of the public safety," such as a belief that "a car loaded with dynamite and driven by an unidentified terrorist was en route to downtown Indianapolis." *Id.* at 6a. The City's failure to establish "such urgency," the court concluded, required the City to comply "with the normal principles constraining law enforcement." *Id.*

Referring to *Sitz*, the court concluded that sobriety checkpoints are permissible at the program level because they are not concerned "primarily with catching crooks," but are "designed to protect other users of the road from the dangers posed by drunk drivers." Pet. App. 8a. And referring to

United States v. Martinez-Fuerte, 428 U.S. 543 (1976), the court believed that checkpoints to intercept illegal immigrants are *sui generis* because they "depend ultimately on [Congress's] sovereign powers over foreign relations, foreign commerce, citizenship, and immigration." Pet. App. 9a.

Finally, the court of appeals acknowledged that the City's program "often discover[s] violations of the traffic laws," and that the City's checkpoints could be constitutional "[i]f the purpose of the roadblock program were to discover such violations." Pet. App. 10a. But it concluded that the City's checkpoint program cannot be upheld on that basis because "purpose . . . is critical to . . . legality," and the City's use of a narcotics dog "shows—what is anyway not contested—that the purpose of the roadblocks is to catch drug offenders." *Id.* at 10a-11a. The court suggested that the situation might be different "if the primary purpose were to detect drunken drivers" because in that case "the dog could be added to the roadblock . . . on the theory that since a sniff is not a search, the incremental invasion of privacy would be negligible." *Id.* at 11a.

Judge Easterbrook dissented. Pet. App. 13a. He observed that, contrary to the majority's view, *Martinez-Fuerte* and *Sitz* permit courts to analyze checkpoints at the program level where the checkpoints are used to enforce the criminal laws. *Id.* Explaining that the inquiry under the Fourth Amendment is "objective," Judge Easterbrook also rejected the majority's focus "on the 'primary' or 'real' motive for the roadblock." *Id.* at 13a-14a. According to Judge Easterbrook, "[s]o far as the fourth amendment is concerned, there is no difference between a roadblock originally designed to catch drug peddlers and also used to catch drunk drivers, and a roadblock originally designed to catch drunk drivers and also used to catch drug peddlers." *Id.* at 15a.

Judge Easterbrook also observed that neither *Sitz* nor *Martinez-Fuerte* used the majority's analytical approach, but that

both cases balanced the "slight" intrusion resulting from a checkpoint against the success of the checkpoint—so long as the officers' discretion is adequately constrained by objective guidelines. Pet. App. 18a-20a. Here, he noted, "Indianapolis was at pains to establish a rigorous protocol for its stops. Roadblocks are fixed; the number of cars selected for inspection is fixed; the procedure following a stop is fixed." *Id.* at 20a. Finally, he rejected the majority's characterization that *Martinez-Fuerte* turned on "a 'border exception' or 'immigration exception' to normal fourth amendment principles . . .," a theory that would have the anomalous effect of giving the federal government "greater freedom to conduct searches and seizures than state and local governments . . . ." *Id.* at 21a-22a.

SUMMARY OF ARGUMENT

I. The City's checkpoints are constitutionally indistinguishable from the checkpoints upheld in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), and *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990). As in *Martinez-Fuerte* and *Sitz*, the City's interests in operating the checkpoints outweigh the checkpoints' minimal intrusion on motorists.

First, "[i]t is hard to think of a more compelling government interest than the need to fight the scourge of drugs on our streets and in our neighborhoods." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 673 (1995). Because of the ease with which drugs are concealed and transported in automobiles, the City's interest in using checkpoints to battle illegal drugs is substantial. The City also uses the checkpoints to check licenses and registrations and to look for signs of driver impairment—activities this Court has deemed important. *See Delaware v. Prouse*, 440 U.S. 648, 658 (1979); *Sitz*, 496 U.S. at 454-55.

Secondly, the City's checkpoints impose minimal intrusions on motorists. Written guidelines instruct the officers precisely how to conduct the stops and leave no room for discretion. Pet. App. 26a-27a. Officers merely ask each driver for a license and registration and look for signs of driver impairment while other officers escort a narcotics-detection dog around the exterior of each vehicle. *Id.* at 57a. On average, each stop lasts between two and three minutes. *Id.* Because the City's use of a narcotics-detection dog to sniff a stopped vehicle is not a search (*United States v. Place*, 462 U.S. 696, 707 (1983)), the intrusion on motorists is no greater than in *Martinez-Fuerte* and *Sitz*, and is insignificant compared to the weight of the City's interests.

Thirdly, the City's checkpoints are more effective than those upheld in *Martinez-Fuerte* and *Sitz*. Officers arrested nine percent of all motorists stopped, and roughly half of those were for narcotics-related offenses. Pet. App. 3a-4a.

II. Contrary to the Seventh Circuit's view, *Martinez-Fuerte* and *Sitz* apply where, as here, the checkpoints further ordinary law-enforcement ends. The checkpoints in *Martinez-Fuerte* were designed to catch persons illegally smuggling aliens into the United States. Similarly, the checkpoints in *Sitz* were designed to catch individuals illegally driving drunk. Moreover, the analytical underpinnings of those cases are different from the "special needs" cases on which the Seventh Circuit relied. *Martinez-Fuerte* stressed that brief automobile checkpoint seizures do not violate the Fourth Amendment in part because motorists have reduced expectations of privacy and freedom of movement. *Martinez-Fuerte*, 428 U.S. at 561-62. "Special needs" cases, on the other hand, arise from searches (not seizures) and are premised on the doctrine of administrative necessity; they are limited to special contexts because they involve highly invasive government conduct. *See, e.g., Skinner v. Railway Executives' Ass'n*, 489 U.S. 602, 620 (1989); *National Treasury Em-*

ployees Union v. Von Raab, 489 U.S. 656, 666 (1989). Automobile checkpoint cases and "special needs" cases thus present independent justifications (and independent limitations) for evaluating government conduct "at the program level." Pet. App. 4a. The Seventh Circuit erred in conflating the two jurisprudential tracks, and its *post-hoc* rationales for *Martinez-Fuerte* and *Sitz* subvert the teachings of Fourth Amendment history and principles of federalism.

Even if the City's use of checkpoints to interdict illegal drugs is not valid under *Martinez-Fuerte* and *Sitz*, the Seventh Circuit was wrong to ignore the City's other valid goals. IPD officers check drivers' licenses and registrations and look for signs of impairment at the checkpoints—all activities that properly may serve as predicates for checkpoints. The City's "primary purpose" (*see* Pet. App. 11a) in operating the checkpoints is constitutionally irrelevant. This Court repeatedly has held that the objective reasonableness of a seizure, and not the subjective purpose behind it, determines Fourth Amendment compliance. *See Whren v. United States*, 517 U.S. 806, 812 (1996). Under well-established Fourth Amendment doctrine, the reasonableness of the officers' conduct ends the inquiry regardless of the City's purposes, and the Seventh Circuit was wrong to evaluate the checkpoints based upon "what the Mayor thought last year." Pet. App. 16a.

ARGUMENT

I. THE CITY'S CHECKPOINT PROGRAM IS VALID UNDER THE BALANCING TEST THE COURT HAS USED IN CHECKPOINT CASES

The Court has held that properly administered checkpoints used to detect crimes are reasonable under the Fourth Amendment, regardless of individualized suspicion. *See Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). The Court's decisions demonstrate that the City's checkpoints are

constitutional because they are "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown v. Texas*, 443 U.S. 47, 51 (1979).

A. The Fourth Amendment Permits Police to Use Checkpoints To Detect Crime

Martinez-Fuerte and *Sitz* control this case. *Martinez-Fuerte*, recognizing that "surreptitious entries" of illegal aliens from Mexico "pose[] formidable law enforcement problems," upheld the constitutionality of fixed highway checkpoints that the United States Border Patrol operated up to 100 miles inland from the Mexican border. 428 U.S. at 552, 558. The sole purpose of those checkpoints was to catch violators of criminal immigration laws. The Court upheld the checkpoint program because the government's substantial interest in preventing illegal immigration outweighed individual motorists' interests in being free from the minimally intrusive stops. *Id.* at 556-57. A central concern of the Court in balancing these interests was that law enforcement discretion be limited to prevent abusive stops. *See id.* at 559. In contrast to roving patrol stops, "routine checkpoint stops do not intrude similarly on the motoring public," and "checkpoint operations both appear to and actually involve less discretionary enforcement activity." *Id.* at 559. *See also United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975) (holding that a roving police unit could not stop motorists without individualized suspicion of wrongdoing); *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973) (striking down roving patrols that gave individual officers far-reaching discretion to make suspicionless stops to uncover illegal aliens).

Martinez-Fuerte foreshadowed the Court's decision in *Brown v. Texas*, 443 U.S. 47 (1979), which more specifically announced a three-part balancing test for determining the reasonableness of seizures that are not based upon individualized suspicion and are less severe than arrest. In *Brown*, the

Court explained that the constitutionality of the seizure depended on "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Id.* at 51. The Court emphasized that balancing these interests must ensure that an "individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Id.* To vindicate this concern, "[t]he Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual, *or* that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Id.* (emphasis added).

That same year, in *Delaware v. Prouse*, 440 U.S. 648, 663 (1979), the Court struck down random stops to check for drivers' licenses and registrations, but observed that "questioning of all oncoming traffic at roadblock-type stops" would be perfectly valid under the Fourth Amendment. *Prouse* recognized that "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Id.* at 654. The Court added that "[i]n those situations in which the balance of interests precludes insistence upon 'some quantum of individualized suspicion,' other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field.' " *Id.* at 654-55. *Prouse* stressed the "danger to life and property posed by vehicular traffic and * * * the difficulties that even a cautious and an experienced driver may encounter," and concluded that the public has a "vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed." *Id.* at 658.

Drawing upon the teachings of *Brown* and *Prouse*, *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 449-50 (1990), upheld sobriety checkpoints and thus reaffirmed *Martinez-Fuerte*'s holding that fixed checkpoints used to detect criminal activity comply with the Fourth Amendment so long as the discretion of individual officers is limited. In *Sitz*, police stopped all vehicles passing through the checkpoint and briefly examined the drivers for signs of intoxication. *Sitz*, 496 U.S. at 447. If a driver showed signs of intoxication, the police would investigate further, sometimes administering sobriety tests. *Id.* Police would arrest the driver if the additional investigation showed the driver was intoxicated. *Id.* Drivers not exhibiting signs of intoxication were allowed to proceed after a brief stop. *Id.*

Relying on *Brown*, *Sitz* held that where police stop motorists based on a procedure embodying neutral criteria rather than individual suspicion, courts determine reasonableness by balancing: (1) the state's interest; (2) the effectiveness of the procedure in furthering that interest; and (3) the level of intrusion into individual privacy caused by the procedure. 496 U.S. at 449-50. The state's interest in eradicating illegal drunk driving, the Court ruled, outweighed motorists' Fourth Amendment interests in not suffering the "slight" objective intrusion caused by the brief stops. *Id.* at 451. With respect to motorists' subjective views, the Court concluded that the "fear and surprise" the checkpoint stops may impose on law-abiding drivers also would be minimal because, as in *Martinez-Fuerte*, "[a]t traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." *Id.* at 452-53 (quoting *Martinez-Fuerte*, 428 U.S. at 558). Subjective intrusion on motorists was also minimal because the "checkpoints are selected pursuant to the guidelines, and uniformed police officers stop every approaching vehicle." *Id.*

With respect to the remaining *Brown* balancing factor—the effectiveness of the checkpoints—*Sitz* held that it "was not meant to transfer from politically accountable officials to the courts the decision as to which among reasonable alternative law enforcement techniques should be employed . . . ." [2] *Id.* at 453. "[F]or purposes of Fourth Amendment analysis," the Court stated, "the choice among such reasonable alternatives remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers." *Id.* at 453-54.

B. The City's Checkpoint Program Is Reasonable Under the Fourth Amendment's Balancing Test

When compared to the interests at stake in *Martinez-Fuerte* and *Sitz*, the City's interest in operating its checkpoints plainly outweighs individual motorists' interests in being free from a brief, minimally intrusive, non-discretionary stop. As Judge Easterbrook stated below, "[o]ne would suppose that our case is *a fortiori* from *Sitz*." Pet. App. 13a.

1. The City has vital interests in stemming the tide of illegal drugs, ensuring that motorists comply with license and registration requirements, and arresting drivers who are impaired.

The IPD uses the checkpoints to accomplish several law-enforcement and public safety ends. Officers conduct a dog sniff of stopped cars, review drivers' licenses and registrations and look for signs that drivers are impaired. Pet. App. 26a. The City has a substantial interest in pursuing each of

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[2] The Mayor of Indianapolis is the elected public official accountable for IPD operations. The Mayor exercises hiring and firing authority over the Director of Public Safety, who in turn is responsible for the daily operations of the IPD, including hiring the Chief of Police. *See* Indianapolis and Marion County, Ind., Rev. Code (1998) §§ 201-3, 251-101, 251-211, 251-212, 253-103.

these goals. *See Sitz*, 496 U.S. at 451; *Brown*, 443 U.S. at 51; *Martinez-Fuerte*, 428 U.S. at 556-57.

Narcotics Detection: The Court has often recognized that the scourge of illegal drugs presents one of the "greatest problems affecting the health and welfare of our population" (*National Treasury Employees Union v. Von Raab*, 489 U.S. 659, 668 (1989)) and has created a "veritable national crisis in law enforcement" (*United* States *v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985)). Thus, "[t]he public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit." *United States v. Mendenhall*, 446 U.S. 544, 561 (1980) (Powell, J. concurring). *See also Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 673 (1995) ("[I]t is hard to think of a more compelling government interest than the need to fight the scourge of drugs on our streets and in our neighborhoods."). Justice Powell commented on the immense hurdles law-enforcement officials face in combating clandestine drug operations:

> Much of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. And many drugs . . . may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement.

United States v. Place, 462 U.S. 696, 704 n.5 (1983) (quoting *Mendenhall*, 446 U.S. at 561-62 (Powell, J., concurring)).

Illegal drug use and trafficking continue to engender crime-prevention and law-enforcement crises. The Office of National Drug Control Policy recently reported that "[d]rug-related offenses and drug-using lifestyles are major contributors to the U.S. crime problem . . . ." Office of National Drug Control Policy, *Drug Policy Information Clearinghouse Fact Sheet* 1 (March 2000). Drug trafficking itself "tends to be associated with the commission of violent crimes," and "murders related to narcotics still rank as the fourth most

documented murder circumstance out of twenty-four possible categories." *Id.* at 4. A 1997 national survey of prison inmates showed that thirty-three percent of state prisoners admitted to committing their offenses while under the influence of drugs. Bureau of Justice Statistics, *Substance Abuse and Treatment, State and Federal Prisoners, 1997* 1 (January 1999). In Indianapolis, the correlation between drug use and crime is even greater: In 1998, 66.8 percent of male arrestees and 67.1 percent of female arrestees tested positive for drugs at the time of their arrests. United States Dep't of Justice, National Institute of Justice, *1998 Annual Report on Drug Use Among Adult and Juvenile Arrestees* 42 (April 1999). The conclusion is inescapable: "The evidence indicates that drug users are more likely than nonusers to commit crimes, that arrestees frequently were under the influence of a drug at the time they committed their offense, and that drugs generate violence." Office of National Drug Control Policy, *Drug Policy Information Clearinghouse Fact Sheet* 4 (March 2000).

Crime is not the sole problem attributable to illegal drugs. A recent study the United States Department of Health and Human Services commissioned estimates that in 1992 alone the "economic cost to society" of drug abuse and dependence in the United States was $98 billion. Henrick Harwood, et al., *The Economic Costs of Alcohol and Drug Abuse in the United States 1992*, 1-1 (1998). By 1995, the study estimates, the annual economic cost of drug abuse was $110 billion. *Id.* at 1-9. The total economic cost includes the direct costs the government incurred for law enforcement as well as lost productivity, wages, and health-care costs attributable to drug abuse. *Id.* at 1-3 (Table 1.1).

Furthermore, the ease with which drugs may be concealed in automobiles poses special problems for law enforcement. In *Martinez-Fuerte*, the Court concluded that the flow of traffic is simply too heavy to permit the "particularized study of a

given car that would enable it to be identified as a possible carrier of illegal aliens." 428 U.S. at 557. That logic applies with even more force to the concealed transportation of narcotics, and authorities have determined that automobiles provide secretive transportation that is critical to the drug trade. The Drug Enforcement Administration has initiated Operation Pipeline specifically to detect and seize illegal narcotics being transported to drug markets in automobiles. *See* United States Department of Justice, Drug Enforcement Administration, *Operations Pipeline and Convoy* (visited May 10, 2000) <www.usdoj.gov/dea/programs/pipecon.htm>. And local authorities charged with eradicating open-air drug markets have concluded that "when you eliminate the drive-by trade, you eliminate a lot—maybe the biggest part—of the retail market" for illegal drugs. David M. Kennedy, United States Department of Justice, National Institute of Justice, *Closing the Market: Controlling the Drug Trade in Tampa, Florida*, 8 (April 1993) (quoting Tampa Police Major Bert Hatcher).

To be sure, the City uses checkpoints to enforce the law. But the checkpoints are geared toward far broader goals of preventing crime and improving community safety. The checkpoints are one part of the City's multi-faceted effort to prevent the social costs of illegal drugs. Within this program is the Indianapolis Weed and Seed Initiative, which is an inter-agency initiative that "weeds out," among other problems, drug use and trafficking in targeted neighborhoods, and then "seeds" the neighborhoods through social and economic revitalization. Office of National Drug Control Policy, *Drug Policy Information Clearinghouse: Indianapolis, Indiana, Profile of Drug Indicators* 2 (December 1999). Another part of the program is the Safe Neighborhood Task Force, which works to eradicate drug markets in the community through, for example, citizen pickets of drug markets, demonstrations against landlords who rent properties to drug dealers, citizen patrols designed to intimidate drug dealers, and police checkpoints. *Id.* at 3. Indianapolis has made it a priority to battle

the social tragedy of drug use and distribution, and the checkpoint program is one front of that battle.

License and Registration Checks: As with the State of Delaware in *Prouse*, Indiana has a vital interest in requiring that its motorists have proper licenses and registrations. Furthermore, as does Delaware, Indiana requires drivers to prove they have a minimum amount of insurance before they may register their cars. Ind. Code § 9-25-4-1 (1997). Thus, the City's use of checkpoints to check automobile licenses and registrations vindicates a number of "legitimate" and "vital" government interests. *See Delaware v. Prouse*, 440 U.S. 648, 658-59 (1979).

Sobriety Checks: In *Sitz*, the Court concluded that "[n]o one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it." 496 U.S. at 451. The Court quoted several sources underscoring the "astounding figures" for deaths and property damage owing to drunk driving. *Id.* (citing *Breithaupt v. Abram*, 352 U.S. 432, 439 (1957); 4 Wayne R. LaFave, *Search And Seizure: A Treatise On The Fourth Amendment* § 10.8(d), 71 (2d ed. 1987)); *Sitz* noted that the Court has "repeatedly lamented the tragedy" associated with drunken driving deaths. *Id.* (quoting *South Dakota v. Neville*, 459 U.S. 553, 558 (1983)). The City's checkpoints vindicate these interests as well.

2. The City's brief checkpoint stops are minimally intrusive.

In terms of both objective and subjective intrusion, the City's checkpoint stops are materially identical to those upheld in *Martinez-Fuerte* and *Sitz*. As with the stops in those cases, the IPD's checkpoint stops are brief, lasting between two and three minutes on average. Pet. App. 57a. IPD officers' inquiries are also limited. An officer asks each driver to produce a valid license and registration and briefly checks the driver for signs of drug or alcohol impairment; simultaneously, another officer walks a drug-sniffing dog around the

exterior of the car. *Id.* Only if there is probable cause that the motorist has committed a crime or poses a threat to officer safety does the IPD conduct a longer, more extensive check of the vehicle. *Id.*

IPD officers operate the checkpoints to minimize whatever subjective intrusion or "fear and surprise" motorists might feel upon encountering the checkpoints. *See Sitz*, 496 U.S. at 452. IPD supervisors, not individual officers, determine well in advance the checkpoints' locations. Pet. App. 56a. IPD officers post road signs warning motorists that they are approaching a police narcotics checkpoint, and they post marked police cruisers nearby, with flashing lights, to reinforce the message that the checkpoints are being operated by police. *Id.* at 57a. Motorists are not pulled over individually but are ordered to stop along with all other cars in a predetermined sequence. *Id.* At least one of the officers who approaches each vehicle is in full uniform. *Id.* Thus, any stopped motorist can observe that other motorists are being stopped and that the officers have visible signs of authority. *See Sitz*, 496 U.S. at 453; *Martinez-Fuerte*, 428 U.S. at 558; *United States v. Ortiz*, 422 U.S. 891, 894-95 (1975).

Furthermore, as in *Sitz*, the IPD operates its checkpoints according to detailed, written guidelines that limit the officers' discretion. The guidelines set forth the procedures for officers to follow at each stage of the encounter. Pet. App. 26a-27a. The guidelines instruct officers exactly what to say to motorists ("ask driver for license and registration. Advise the citizen that they are being stopped briefly at a drug checkpoint") and what to observe ("Look for signs of impairment, conduct open view examination of vehicle from outside vehicle."). *Id.* The guidelines describe conditions when an officer may ask a driver to step out of the car or search the car for a weapon or contraband. *Id.* Significantly, the guidelines' final paragraphs communicate in no uncertain terms that officers lack discretion:

8. EVERY VEHICLE BEING STOPPED MUST BE EXAMINED IN THE SAME MANNER UNTIL PARTICULARIZED SUSPICION OR PROBABLE CAUSE DEVELOPS. THERE WILL BE NO EXCEPTIONS! A DRUG DETECTION DOG WILL WALK AROUND AND EXAMINE EVERY VEHICLE STOPPED AT THE CHECKPOINT.

9. THERE WILL BE NO DISCRETION GIVEN TO ANY OFFICER TO STOP ANY VEHICLE OUT OF SEQUENCE. WHEN THE SEQUENCE OF VEHICLES HAVE BEEN TOTALLY DEALT WITH AND EITHER RELEASED OR SEIZED, THE VERY NEXT SEQUENCE OF VEHICLES WILL BE STOPPED. NO VEHICLES WILL BE PERMITTED TO PASS THE CHECKPOINT BEFORE ANOTHER SEQUENCE IS STOPPED AFTER ALL VEHICLES IN THE CURRENT SEQUENCE HAVE BEEN RELEASED OR SEIZED.

Id. at 54a.

The City thus assuages the Court's expressed concerns that unbridled discretion in the hands of police officers can cause a substantial Fourth Amendment intrusion. *See Delaware v. Prouse*, 440 U.S. 648, 661 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973). As with the checkpoints in *Martinez-Fuerte* and *Sitz*, the City's checkpoints cause only a minimal intrusion on motorists' Fourth Amendment interests.

It bears emphasis that the IPD's use of the narcotics-detection dog does not present an independent intrusion of constitutional significance. In *United States v. Place*, 462 U.S. 696 (1983), the Court held that the government's use of a trained dog to sniff the exterior of luggage at an airport did not constitute a search under the Fourth Amendment. The Court explained that a dog sniff is far less intrusive than a search:

> A "canine sniff" by a well-trained narcotics detection dog, however, does not require opening the luggage. It does not expose noncontraband items that otherwise would remain hidden from public view, as does, for example, an officer's rummaging through the contents of the luggage. Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited. This limited disclosure also ensures that the owner of the property is not subjected to the embarrassment and inconvenience entailed in less discriminate and more intrusive investigative methods.

Id. at 707. The uniquely limited intrusiveness of a dog sniff ("We are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure," *id.*) applies equally to the IPD's instructing a dog to sniff the exterior of a vehicle. A sniff does not require the IPD to open any compartment of the vehicle or to expose noncontraband items to public view, and the sniff discloses only the presence of illegal narcotics, a contraband item. *See Bond v. United States*, 120 S. Ct. 1462, 1466 (2000) (Breyer, J., dissenting) (commenting on "the accepted police practice of using dogs to sniff for drugs hidden inside luggage"). And because the sniff is conducted while an officer checks the driver's license and car registration and looks for signs of impairment, the sniff does not further infringe the motorist's freedom of movement.[3]

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[3] In any event, respondents challenge only the initial stop, not the use of the narcotics-detection dog. Respondents' Seventh Circuit Reply Brief at 3 n.1.

3. The City's checkpoints significantly advance its substantial interests, as evidenced by their high hit rate.

The final component of the balancing test is "the degree to which the seizure advances the public interest." *Brown v. Texas*, 443 U.S. 47, 51 (1979). The City's program, with a total hit rate of 9.4 percent, is far more successful than the checkpoint programs upheld in *Martinez-Fuerte* and *Sitz*. In *Martinez-Fuerte*, the checkpoints detected illegal aliens in only .12 percent of the cars passing through the checkpoint. 428 U.S. at 554. In *Sitz*, police arrested 1.6 percent of the drivers. 496 U. S. at 455. The City's hit rate is divided almost equally between arrests for narcotics violations (fifty-five arrests, or 4.74 percent) and other violations or crimes (fifty-four arrests, or 4.65 percent). Pet. App. 13a, 55a. Even if the only relevant hit rate were of narcotics arrests, the City's checkpoints would still be more successful than those upheld in *Martinez-Fuerte* and *Sitz*.

* * * *

Brown balancing applies in this case with particular ease. *Martinez-Fuerte* and *Sitz* are the proper precedents for the Court to weigh the City's interests against the degree of Fourth Amendment intrusion of the checkpoints. The City vindicates interests of the utmost significance when it interdicts illegal narcotics, enforces license and registration laws, and arrests drunk drivers. Given the stops' brevity and the checkpoints' tightly controlled operation, individual motorists suffer only a minimal intrusion on their Fourth Amendment rights. And the checkpoints' high hit rate confirms that the City is acting reasonably.

II. THE CITY DOES NOT NEED INDIVIDUALIZED SUSPICION TO STOP MOTORISTS AT ITS CHECKPOINTS

The Seventh Circuit concluded that, because the City's primary goal in operating its checkpoints is to interdict drugs,

its checkpoints belong in a different jurisprudential category than the roadblocks upheld in *Sitz* and *Martinez-Fuerte* and therefore may not be justified under the Fourth Amendment "at the program level." Pet. App. 4a. But the Seventh Circuit was wrong to conclude that *Sitz* and *Martinez-Fuerte* are based on this Court's "special needs" jurisprudence. It was also wrong to hold that, in any event, the City does not pursue any "special needs" that justify the roadblocks.

A. *Martinez-Fuerte* and *Sitz* Upheld Checkpoints that Vindicated Normal Law Enforcement Purposes

1. *Martinez-Fuerte* and *Sitz* leave no doubt that checkpoints designed to detect evidence of criminal conduct are permissible.

The officers in *Martinez-Fuerte* and *Sitz* operated their checkpoints with the same ultimate purpose: to arrest those suspected of committing crimes. In *Martinez-Fuerte*, Border Patrol officers arrested each of the defendants on suspicion of illegally transporting aliens, a violation of 8 U.S.C. § 1324 (a)(2). *United States v. Martinez-Fuerte*, 428 U.S. 543, 545, 550 (1976). Federal authorities prosecuted the defendants for smuggling illegal aliens, and at their trials, each defendant sought to suppress evidence that the Border Patrol officers discovered at the checkpoints. *Id.* at 545. The motions of Amado Martinez-Fuerte and Rodolfo Sifuentes were unsuccessful, and they were convicted of transporting illegal aliens. *Id.* at 548, 550. The Court reviewed the constitutionality of the Border Patrol's checkpoints following appellate review of these criminal cases. *See id.* at 551.

Martinez-Fuerte stressed the importance of the checkpoints in handling "law enforcement problems." 428 U.S. at 552. The Court also noted that federal authorities would routinely prosecute smugglers such as the *Martinez-Fuerte* defendants whom Border Patrol agents apprehended. *Id.* at 553 n.9. The Court was well aware that the Border Patrol checkpoints were

directly targeted at criminal activity and were designed to detect evidence used in criminal prosecutions. And, notably, the Court expressed no reservations about how evidence discovered at the checkpoints might be used. Ultimately, the Court affirmed the convictions of Martinez-Fuerte and Sifuentes and thus approved the government's use of vehicle checkpoints to discover evidence of criminal conduct. *Martinez-Fuerte*, 428 U.S. at 567.

Similarly, the sobriety checkpoints in *Sitz* were targeted at identifying and arresting drunk drivers. The Michigan Department of State Police and state prosecutors helped develop the roadblocks, which were operated with the local Sheriff's Department's assistance. *Michigan Dep't. of State Police v. Sitz*, 496 U.S. 444, 447-48 (1990). The guidelines governing the checkpoints' operation specifically directed that "[s]hould the field tests and the officer's observations suggest that the driver was intoxicated, an arrest would be made." *Id.* at 447. The respondents in *Sitz* argued that the Court should not apply the *Brown* balancing test precisely *because* the Michigan State Police used the checkpoints for normal law enforcement purposes. *Id.* at 450. The Court, well aware of the criminal-investigation ends behind the sobriety checkpoints, rejected the respondents' arguments that the balancing test was improper. *Id.* It employed the *Brown* balancing test and upheld the criminal-investigatory sobriety checkpoints. *Id.* at 455 (citing *Brown v. Texas*, 443 U.S. 47, 50-51 (1979)).

2. *Martinez-Fuerte* and *Sitz* are not "special needs" or administrative search cases.

Contrary to the Seventh Circuit's understanding (Pet. App. 4a), the Court's checkpoint cases turn on motorists' reduced expectations of privacy and freedom of movement, not special needs or administrative necessity. In reviewing the constitutionality of immigration checkpoints, *Martinez-Fuerte* relied on *Camara v. Municipal Court*, 387 U.S. 523 (1967), for the proposition that "the Fourth Amendment imposes no

irreducible requirement of [individualized] suspicion." *Martinez-Fuerte*, 428 U.S. at 561. *Camara* upheld a local government's ability to conduct inspections of private dwellings for housing-code violations without first obtaining either the occupant's consent or a warrant predicated on individualized suspicion. *Camara*, 387 U.S. at 537. In place of individualized suspicion, *Martinez-Fuerte* explained, the Court in *Camara* "examined the government interests advanced to justify such routine intrusions 'upon the constitutionally protected interests of the private citizen' . . . and concluded that under the circumstances the government interests outweighed those of the private citizen." *Martinez-Fuerte*, 428 U.S. at 561 (quoting *Camara*, 387 U.S. at 534-35). Though acknowledging that the case before it presented circumstances substantially different from those present in *Camara*, the Court nonetheless deemed *Camara*'s analysis appropriate:

> We think the same conclusion [as in *Camara*] is appropriate here, where we deal neither with searches nor with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection. * * * As we have noted earlier, one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence. * * * And the reasonableness of the procedures followed in making these checkpoint stops makes the resulting intrusion on the interests of motorists minimal.

Id. at 561-62 (citations omitted).

Thus, *Camara* justified a balancing approach based on the administrative necessity that made individualized suspicion unworkable in the housing inspection context. *Camara*, 387 U.S. at 537. *Martinez-Fuerte* (and later *Sitz*) justified a balancing approach based on motorists' reduced expectations of privacy and of freedom of movement. 428 U.S. at 561. When the government has a substantial interest in preventing and deterring crime that is specific to, or well-masked by, the

use of cars on public roadways, the minimally intrusive and relatively non-threatening nature of checkpoint stops permits reasonableness testing at the program level. Significantly, *Martinez-Fuerte* was not the first time the Court followed the *Camara* approach in the automobile context. In *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975), the Court, following *Camara*, employed a reasonableness balancing test to roving immigration patrol stops. Only after concluding that the Border Patrol officers' discretion was so unfettered that it threatened a degree of intrusion on individual privacy and free passage that outweighed the government's interest did the Court conclude that individualized suspicion was necessary. *Id.* at 882.

To emphasize that its decision to apply the balancing test did *not* turn on administrative necessity, *Martinez-Fuerte* noted that the "administrative" purpose of many common checkpoint stops (including those to enforce license and registration requirements, safety requirements, and weight limits) "is of limited relevance in weighing their intrusiveness on one's right to travel." *Martinez-Fuerte*, 428 U.S. at 560 n.14. Thus, the Seventh Circuit misunderstood the rationale supporting *Martinez-Fuerte* when it characterized it as one of a number of cases relating to "primarily civil regulatory programs." Pet. App. 4a.

The Seventh Circuit's misreading of *Martinez-Fuerte* is even more apparent in the court's assertion that *Martinez-Fuerte*'s holding "depend[s] ultimately on sovereign powers over foreign relations, foreign commerce, citizenship, and immigration." Pet. App. 9a. The *Martinez-Fuerte* majority opinion nowhere expresses reliance on Congress's exclusive power over immigration (or anything else) to override generally applicable Fourth Amendment limitations on government action. In fact, as if anticipating this very misinterpretation, *Martinez-Fuerte* specifically disclaimed any such reliance:

> Congress has expressly authorized persons believed to be aliens to be interrogated as to residence, and vehicles "within a reasonable distance" from the border to be searched for aliens. * * * Our prior cases have limited significantly the reach of this congressional authorization, requiring probable cause for any vehicle search in the interior and reasonable suspicion for inquiry stops by roving patrols. * * * We understand, of course, that neither long-standing congressional authorization nor widely prevailing practice justifies a constitutional violation.

428 U.S. at 566 n.19. Furthermore, as the Court alluded, if Congress's immigration power provided an implicit Fourth Amendment override, *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973), and *Brignoni-Ponce*, 422 U.S. 873 (where Border Patrol officers were executing the commands of Congress in making their roving patrols) not only would have reached the opposite conclusion, but also would have had no reason to engage in an extended Fourth Amendment analysis.

3. The "special needs" doctrine does not supply the proper Fourth Amendment analysis for [redacted] City's checkpoints.

The Seventh Circuit ultimately confused the rationales supporting *Martinez-Fuerte* and *Brown* with the rationale supporting the analysis in Fourth Amendment administrative *search* cases. In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), Justice Blackmun, concurring, stated: "Only in those exceptional circumstances in which *special needs*, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable, is a court entitled to substitute its balancing of interests for that of the Framers." *T.L.O.*, 469 U.S. at 351 (Blackmun, J., concurring) (emphasis added). Following *T.L.O.*, the Court has relied on Justice Blackmun's formulation and has equated the government's various needs for conducting administrative searches with the "special needs" that Justice Blackmun identified. In *New*

York v. Burger, 482 U.S. 691, 702 (1987), for example, the Court upheld the warrantless inspection of a junkyard for required administrative documentation based on the state's "special needs" in enforcing junkyard licensing requirements. The Court also has held that the government may require law enforcement officers and train operators to submit to drug tests regardless of individualized suspicion based on "special governmental needs, beyond the normal need for law enforcement," in its employees' safe performance of their duties. *See National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 666 (1989); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989). And recently, the Court reined in the use of the "special needs" doctrine when it held that the state of Georgia did not have a special need for subjecting political candidates to drug testing. *Chandler v. Miller*, 520 U.S. 305, 318 (1997).

The cases at the core of the "special needs" doctrine have not addressed the brief, low-intensity *seizures* attendant to an automobile-checkpoint stop. They have instead grappled with, and significantly limited, much more invasive and laborious government *searches* of people and their businesses, belongings, homes, and hotel rooms. *See, e.g.*, *Chandler*, 520 U.S. at 321-22 (invalidating a law requiring candidates for office to pass a drug test); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 665 (1995) (upholding random drug testing of students who participate in interscholastic sports); *Von Raab*, 489 U.S. at 677 (upholding mandatory drugs tests for United States Customs Service employees seeking transfer or promotion to sensitive positions); *Skinner*, 489 U.S. at 633-34 (upholding mandatory drug and alcohol testing for railway employees involved in train accidents or who violate safety rules); *Burger*, 482 U.S. at 717 (upholding administrative inspections of private automobile junkyards); *T.L.O.*, 469 U.S. at 345 (upholding search of a student's purse); *Michigan v. Clifford*, 464 U.S. 287, 294-95 (1984) (limiting the scope of fire investigators' search of a home based on an adminis-

trative warrant); *Donovan v. Dewey*, 452 U.S. 594, 603 (1981) (upholding a federal health and safety inspection of a mine); *Michigan v. Tyler*, 436 U.S. 499, 511 (1978) (limiting the justifiable range of a search of a burned store for evidence of the cause of the fire); *Abel v. United States*, 362 U.S. 217, 228-29 (1960) (upholding execution of an administrative warrant based on less than probable cause to search a suspected illegal alien's hotel room).

The requirement that the government have a "special need" beyond ordinary crime detection to conduct the search is grounded in the invasive nature of the searches at issue and, in some cases, the limits of the state or federal statutes authorizing the searches. *See, e.g., Clifford*, 464 U.S. at 298; *Donovan*, 452 U.S. at 602. Without such limits, government actors may be tempted to abuse the searches at the expense of highly valued privacy expectations. Where a minimally invasive, brief vehicle stop is at issue, there is no similar need to adopt a rigid distinction between criminal investigation needs and "special needs." [4]

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[4] *Camara* itself rejected the strict crime/regulatory distinction embraced by the Seventh Circuit in this case. Overturning *Frank v. Maryland*, 359 U.S. 360, 365 (1959), the Court in *Camara* rejected the notion that "the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court*, 387 U.S. 523, 530 (1967). The Court also recognized the futility of crafting strict crime/regulatory distinctions, considering that all civil regulatory requirements are in some way backed up by the threat of criminal sanctions. *Id.* at 531. This skepticism of drawing a strict distinction between a city's criminal law interests and its regulatory interests bears directly on this case. While the City intends for offenders apprehended at the checkpoints to be prosecuted, such prosecutions support the important regulatory and public-policy needs that prompted the City to operate the checkpoints: to interdict illegal drugs and to keep the streets safe. These are needs that the City may—and does—pursue apart from employing criminal investigations. Thus, the checkpoints cannot be strictly characterized as a form of criminal investigation.

The "special needs" doctrine therefore does not preclude the Court's use of a "program level" balancing test to analyze brief, slightly intrusive automobile checkpoint seizures. Indeed, *Sitz* expressly rejected such incompatibility. Relying on *Von Raab*, the respondents in *Sitz* argued that the checkpoints could not be upheld at the program level because the state's only purpose was to enforce ordinary criminal law, and not to pursue some "special need." 496 U.S. at 449-50. The Court expressly dismissed this argument in terms that underscore the test to be applied in this case:

> [I]t is perfectly plain from a reading of *Von Raab*, which cited and discussed with approval our earlier decision in *United States v. Martinez-Fuerte* * * * that it was in no way designed to repudiate our prior cases dealing with police stops of motorists on public highways. *Martinez-Fuerte*, *supra*, which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown v. Texas*, *supra*, are the relevant authorities here.

496 U.S. at 450 (citation omitted).[5] Thus, the "special needs" cases do not control here.

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[5] *Chandler* implicitly acknowledges the separate lines of authority between the "special needs" balancing cases and the checkpoint balancing cases. In stating that "a search ordinarily must be based on individualized suspicion of wrongdoing . . . [b]ut [that] particularized exceptions to the main rule are sometimes warranted based on 'special needs, beyond the normal need for law enforcement,'" the Court did not cite *Sitz*, *Martinez-Fuerte*, or any other checkpoint case. Instead, the Court cited core special needs cases: *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995); *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602 (1989); and *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989). *See Chandler v. Miller*, 520 U.S. 305, 313 (1997). That the Court relied upon *Von Raab* in *Chandler*, a "special needs" case, and distinguished *Von Raab* in *Sitz*, a checkpoint case, demonstrates the peaceful coexistence of the two lines of suspicionless search-and-seizure authority that apply in two different contexts.

4. A revisionist interpretation of *Martinez-Fuerte* and *Sitz* as "special needs" cases poses troubling federalism problems.

To read *Martinez-Fuerte* and *Sitz* as turning on government justifications beyond the need for ordinary law enforcement not only would be inaccurate, but would also free Congress of significant Fourth Amendment constraints while simultaneously inhibiting states and municipalities from experimenting with innovative law-enforcement techniques. The Seventh Circuit found that *Martinez-Fuerte* did not control here because *Martinez-Fuerte* rested on an enumerated power of the federal government. Pet. App. 9a. This revisionist interpretation of *Martinez-Fuerte* creates an anomaly troubling to federalism. The Framers adopted the Fourth Amendment to limit the federal government as a reaction to the abuse of international trade and customs powers they had suffered as colonists when Crown officials exercised unfettered discretion in searching colonists' warehouses for dutiable goods. *See* Leonard W. Levy, *Original Intent and the Framers' Constitution* 234-46 (1988); Telford Taylor, *Two Studies in Constitutional Interpretation* 23-44 (1969). *See also* Pet. App. 22a. Anti-federalists such as Richard Henry Lee complained about the federal government's similar powers under the Constitution. Levy, *Original Intent* at 244-45. Intending to derail ratification, Lee proposed a bill of rights, including restrictions on searches and seizures. *Id.* at 241. But under James Madison's political guidance, re-drafted versions of Lee's proposal instead justified ratification as a prophylactic against potential federal government abuses similar to those that enraged the colonists. *See id.* at 241-46. And until incorporation, the Fourth Amendment constrained only the federal government. Similar curbs on state police authority were left entirely to the states and their constitutions. *See Irvine v. California*, 347 U.S. 128, 134 (1954) ("Never until June of 1949 [in *Wolf v. Colorado*, 338 U.S. 25 (1949)] did this Court

hold the basic search-and-seizure prohibition in any way applicable to the states under the Fourteenth Amendment.").

Nothing in this Court's subsequent cases or in the text, structure, or history of the Constitution explains why the Fourth Amendment passed through the Fourteenth with greater limitations on state and local governments than on the federal government. To the contrary, as Judge Easterbrook observed, such an interpretation is "at war" with the Constitution's text and history. Pet. App. 22a. At the Constitutional Convention, Patrick Henry protested that the potential oppressiveness of "federal sheriffs" acting under distant superiors was greater than that threatened by local officers. Nelson B. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* 92 (1937). This historical predicate for the Fourth Amendment remains true now, not in the least because "[s]earches by the national government pose a serious threat to the citizenry; searches by local governments pose less, because movement within the country is easy." Pet. App. 22a.

Especially given the severity and intractability of the war against drugs, municipalities need flexibility in developing new law enforcement techniques. The Seventh Circuit interpreted *Sitz* to preclude local experimentation with law enforcement techniques rather than to leave states and municipal governments to explore a variety of reasonable options. That reading improperly inhibits federalism's promise of state and local flexibility and innovation, as exemplified by the City's checkpoints.

B. Even If the "Special Needs" Doctrine Governs, the City's Checkpoints Satisfy It

If, as the Seventh Circuit believed, this Court's checkpoint cases could be understood as "special needs" cases, the City's checkpoints still are constitutional. The City has special needs to check drivers' licenses and vehicle registrations and

to detect driver impairment. It makes no difference to the legality of the stops that the IPD officers simultaneously use their unaided powers of observation to detect whether motorists are engaging in other crime. Likewise, it should make no difference that the officers also lead a narcotics-detection dog around the cars' exteriors to sniff for drugs.

Yet, notwithstanding the City's sufficient "special needs" for its checkpoints, the Seventh Circuit disallowed the checkpoints because vindicating these "special needs" is not the City's primary purpose. Pet. App. 10a-11a. According to the court below, it might be different if the City's primary purpose were to check licenses and registrations or to check for driver impairment, and the dog were added as a mere afterthought. *Id.* at 10a, 11a. But because narcotics interdiction is foremost on the City's agenda, the court ruled, the City's other justifications for the checkpoints are constitutionally insufficient.[6] *Id.* at 7a, 11a.

The Court consistently has held that police officers' subjective intentions have no place in Fourth Amendment analysis. In *Whren v. United States*, 517 U.S. 806 (1996), the

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[6] For its proposition that an improper purpose destroys the checkpoints' validity, the Seventh Circuit cited dictum from the plurality opinion in *Texas v. Brown*, 460 U.S. 730 (1983), which upheld a search of an automobile based on an officer's plain-view observation of drug paraphernalia, but noted that there was no "suggestion that the roadblock was a pretext whereby evidence of narcotics violation might be uncovered . . . ." *Id.* at 743 (plurality opinion of Rehnquist, J.). Any significance this plurality statement may initially have born was negated in *Horton v. California*, 496 U.S. 128, 141 (1990), where the Court overturned the "inadvertence" requirement of the plain-view doctrine and reduced that doctrine to a wholly objective inquiry as to whether the incriminating evidence was in plain view. And in *Whren v. United States*, 517 U.S. 806, 812 (1996), the Court rejected a "pretext" argument based solely on outdated dictum. The Seventh Circuit also cited *United States v. Ortiz*, 422 U.S. 891 (1975). *See* Pet. App. 7a. However, *Ortiz* does not even mention the "pretext" issue.

Court held that an objectively reasonable stop for a moving traffic violation was valid notwithstanding that police officers may have intended to find evidence of drug possession or trafficking. "[T]he fact that [a police] officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Id.* at 813 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)) (internal quotation marks omitted). Thus, because the officers had a legitimate basis for stopping the car, any ulterior motive could not invalidate the stop, and any otherwise permissible action they may take during the stop as a result of that ulterior motive (such as to observe what is in plain view) is permissible. *See id.* at 812; *see also United States v. Villamonte-Marquez*, 462 U.S. 579, 584 n.3 (1983) (holding that officers' drug detection motive did not invalidate an otherwise proper boat seizure conducted pursuant to suspicionless maritime document-inspection program); *United States v. Biswell*, 406 U.S. 311, 315 (1972) (upholding suspicionless inspection of pawn shop based on the government's interest in regulating firearms and preventing violent crime, despite the consequent prosecution of pawn shop proprietor).

Recently the Court confirmed that *Whren* applies to actions police take without individualized suspicion. In *Bond v. United States*, 120 S. Ct. 1462 (2000), the Court addressed whether law enforcement officers may handle bus passengers' luggage "in an exploratory manner" without individualized suspicion of wrongdoing. *Id.* at 1465. Though declaring such government action unreasonable under the Fourth Amendment, the Court was careful to stress that its decision did *not* turn on whether the officer had a subjective law enforcement intent. Citing *Whren* and *California v. Ciraolo*, 476 U.S. 207, 212 (1986), the Court stated that "the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth

Amendment.* * * This principle applies to the agent's acts in this case as well; the issue is not his state of mind, but the objective effect of his actions." *Id.* at 1465 n.2. The Court thus has established that where the government articulates and pursues a legitimate interest for a suspicionless stop, courts should not look behind that interest to determine whether the government's "primary purpose" is valid.

Here, IPD officers use checkpoints to check licenses and registrations and for signs that drivers are impaired—constitutionally permissible conduct under *Sitz* and *Prouse*. The City has acknowledged that a principal purpose in operating the checkpoints is to interdict illegal narcotics. Under *United States v. Place,* 462 U.S. 696, 707 (1983), the City's use of the narcotics-detection dogs to pursue its narcotics interdiction interest is no different from the *Whren* officers' plain-view observation of the car they stopped for traffic violations. The same issue would face the Court if IPD officers merely were to pursue their interest in detecting illegal narcotics by way of a plain-view observation of stopped cars rather than by way of narcotics-detection dogs (except the checkpoints would be less effective).

Furthermore, to allow the City's admitted principal purpose of drug interdiction to invalidate the IPD's constitutionally reasonable actions would indeed lead to an "incongruous result." *See Villamonte-Marquez*, 462 U.S. at 584 n.3. The citizens of Indianapolis have elected a new mayor since the IPD last operated its checkpoints. Under the Seventh Circuit's standard, the legitimacy of future checkpoints would turn entirely on whether the new mayor and his administrative appointees have the same priorities as the prior administration, and not on what IPD officers do at the checkpoints. This is an untenable standard given the various interests that government leaders must meld in forming public policy. Often, municipal and police leaders hope to achieve multiple objectives when they authorize particular law-enforcement

activities, including checkpoints. The priorities of the mayor, the chief of police, police department supervisors, and officers on the street properly may change with each checkpoint, even though the police operate successive checkpoints in the identical manner. To require the City to "prove" that its motive is proper (or alternatively, to require a challenging plaintiff to prove that it was not) assumes a unity and solidity of purposes and motives that is unlikely ever to occur. Such an inquiry will produce results far too attenuated to be meaningful and will merely frustrate the efforts of poliee to engage in objectively reasonable law-enforcement conduct. *See Whren*, 517 U.S. at 815 (observing the difficulty of "plumb[ing] the collective consciousness of law enforcement" in determining Fourth Amendment reasonableness).

The City's checkpoints fall within the long line of cases establishing that objective reasonableness is the touchstone for Fourth Amendment compliance. *See, e.g., Bond v. United States*, 120 S. Ct. 1462, 1465 n.2 (2000); *Whren*, 517 U.S. at 812; *Graham v. Connor*, 490 U.S. 386, 397-99 (1989); *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985); *Scott*, 436 U.S. at 138; *United States v. Robinson*, 414 U.S. 218, 236 (1973). If the City pursues a legally adequate program-level justification for the checkpoints, then there is no Fourth Amendment violation. The IPD's objectively reasonable actions in checking drivers' licenses and registrations and looking for signs of driver impairment are sufficient under the "special needs" doctrine (if it applies here at all), notwithstanding that the City uses the checkpoints to achieve a primary goal of interdicting illegal drugs. *See Merrett v. Moore*, 58 F.3d 1547, 1550-51 (11th Cir. 1995), *cert. denied,* 519 U.S. 812 (1996). The Court should, therefore, analyze under the Fourth Amendment balancing test the objective conduct of the officers operating the checkpoints and conclude that the checkpoints are reasonable.

CONCLUSION

The Court should reverse the judgment of the court of appeals.

Respectfully submitted,

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